

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL BAIRD,

No. C-12-6316 EMC

Plaintiff,

**ORDER RE DEFENDANT'S OFFER OF
PROOF**

v.

OFFICE DEPOT,

Defendant.

Previously, the Court granted in part and denied in part Plaintiff's motion for summary judgment regarding certain affirmative defenses tendered by Defendant. *See* Docket No. 62 (order). In the order, the Court dismissed some defenses – including Affirmative Defense No. 3 – because Defendant had voluntarily withdrawn the defenses, admitting that it had no factual basis for the defenses at that time. The Court stated that these defenses would be dismissed without prejudice for the time being but added that the dismissal would be *with* prejudice on March 20, 2014 (the expert discovery deadline) unless Defendant made an offer of proof in support of the defenses by that day.

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1 Defendant has now made an offer of proof as to its third affirmative defense – *i.e.*, that
2 Plaintiff failed to exhaust administrative remedies available to him. *See* Docket No. 7 (answer).
3 Having reviewed that offer of proof, the Court vacates its prior order dismissing that defense and
4 shall allow Defendant to assert that defense in this lawsuit. There is no apparent prejudice to
5 Plaintiff if the defense is reinstated.

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7 IT IS SO ORDERED.

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9 Dated: March 21, 2014

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12 EDWARD M. CHEN
13 United States District Judge
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